



STATE OF CALIFORNIA

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November 16, 1988

Dear

This is in response to your November 4, 1988 letter to concerning the proposed transfer of real property from , a California general partnership, to as a limited partnership and whether the transfer would constitute a change in ownership for property tax reassessment purposes.

According to your letter, which currently owns real property and has more than a dozen general partners, including some investment limited partnerships, plans to convert into a limited partnership with and a California corporation, as the general partners and the other former general partners of as limited partners. Under the present structure, each partner has a certain number of "units" representing his proportionate ownership interest in the partnership. There will be no change as a result of the conversion in either the number of units held by any partner or in the economic benefits associated with such units.

Section 60 of the Revenue and Taxation Code (all section references contained herein are to the Revenue and Taxation Code) states that:

A "change in ownership" means a transfer of a present interest in real property, including the beneficial use thereof, the value of which is substantially equal to the value of the fee interest.

Section 61(i) states that the definition of a change in ownership includes:

The transfer of any interest in real property between a corporation, partnership, or other legal entity and a shareholder, partner, or any other person.

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However, Section 62(a)(2) states, in pertinent part, that a change in ownership shall not include:

Any transfer between an individual or individuals and a legal entity or between legal entities, such as a cotenancy to a partnership, a partnership to a corporation, or a trust to a cotenancy, which results solely in a change in the method of holding title to the real property and in which proportional ownership interests of the transferors and transferees, whether represented by stock, partnership interest, or otherwise, in each and every piece of real property transferred, remain the same after the transfer.

When these sections are applied to the facts presented, such a transfer can be excluded from "change in ownership" under Section 62(a)(2) because proportional ownership interests are maintained.¹ This being the case, the change in general partners does not have "change in ownership" implications.

It is important to note, however, that a transfer of real property to a legal entity which is excluded under Section 62(a)(2) triggers the application of Section 64(d). That section states:

If property is transferred on or after March 1, 1975, to a legal entity in a transaction excluded from change in ownership by paragraph (2) of subdivision (a) of Section 62, then the persons holding ownership interests in such legal entity immediately after the transfer shall be considered the "original coowners." Whenever shares or other ownership interests representing cumulatively more than 50 percent of the total interests in the entity are transferred by any of the original coowners in one or more transactions, a change in ownership of that real property owned by the legal entity shall have occurred, and the property which was previously excluded from change in ownership under the provisions of paragraph (2) of subdivision (a) of Section 62 shall be reappraised.

Under this section, those persons holding partnership interests in WHWC as a limited partnership become "original coowners". If and when those original coowners cumulatively transfer ownership interests in the limited partnership of more than 50


In this regard, we have not reviewed any partnership documents, etc., but we have proceeded from the premise that the representations regarding the "units" set forth on page 1 hereof are correct.

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percent, the real property which was excluded from "change in ownership" by Section 62(a)(2) will undergo a change in ownership and property tax reassessment.

The views expressed in this letter are, of course, advisory only and are not binding upon the assessor of any county. You may wish to consult the Napa County Assessor in order to confirm that the described property will be assessed in a manner consistent with the conclusion stated above.

Very truly yours,


James K. McManigal, Jr.
Tax Counsel

JKM:cb
1635D

cc:

Memorandum

To : Mr. Verne Walton

Date : May 3, 1989

From : Eric F. Eisenlauer

Eric F. Eisenlauer

Subject : Change in Ownership - Partnership Interest

This is in response to your memorandum of April 5, 1989, to Mr. Richard Ochsner in which you request our opinion as to whether a change in ownership would occur under either of the following two scenarios:

1. Partnership One owns the Property. "A" owns 50 percent of Partnership One, as a limited partner. Partnership Two owns the other 50 percent of Partnership One, as the general partner. Partnership Three owns 25 percent of Partnership Two, as a limited partner. If "A" acquires an 8.5 percent limited partnership interest in Partnership Two from Partnership Three, has a change of ownership occurred for purposes of determining the propriety of reassessing the Property? "A" would have a 50 percent direct limited partnership interest in the Property, and another approximately 1.2 percent limited partnership interest, indirectly. No actual change of control is possible due to the fact that the interest which is proposed to be acquired is a limited partnership interest, and is an interest in a partnership where the other 98.8 percent is owned and controlled by unaffiliated, unrelated parties, with 75 percent held by a single general partner. "A" would ultimately be distributed more than 50 percent of the profits from the Property, but would not necessarily own a corresponding amount of the capital of the partnership.

Revenue and Taxation Code (all statutory references are to the Revenue and Taxation Code unless otherwise indicated) section 60 defines "change in ownership" to mean "a transfer of a present interest in real property, including the beneficial use thereof, the value of which is substantially equal to the value of the fee interest."

Section 64(a) provides in relevant part that "[e]xcept as provided in subdivision . . . (c) . . . of this section, the purchase or transfer of ownership interests in legal entities, such as . . . partnership interests, shall not be deemed to constitute a transfer of the real property of the legal entity."

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Section 64(c) provides in relevant part that "[w]hen a corporation, partnership, other legal entity or any other person obtains control as defined in Section 25105, in any corporation, or obtains a majority ownership interest in any partnership . . . through the purchase or transfer of corporate stock, [or] partnership interest . . . such purchase or transfer . . . shall be a change of ownership of property owned by the corporation, [or] partnership . . . in which the controlling interest is obtained."

Section 25105 provides that "[d]irect or indirect ownership or control of more than 50 percent of the voting stock . . . shall constitute ownership or control. . . ."

The Board has interpreted the foregoing provisions in Property Tax Rule 462(j) which provides in relevant part that "[¶] (3) . . . [e]xcept as is otherwise provided in subdivision (4), the purchase or transfer of corporate stock, partnership shares, or ownership interests in other legal entities is not a change in ownership of the real property of the legal entity." Subdivision (4)(A) provides an exception to the foregoing rule "[w]hen any corporation, partnership, other legal entity or any person: (i) obtains direct or indirect ownership or control of more than 50 percent of the voting stock in any corporation which is not a member of the same affiliated group of corporation . . . , or (ii) obtains direct or indirect ownership of more than 50 percent of the total interest in both partnership capital and profits . . . [¶] Upon the acquisition of such direct or indirect ownership or control, all of the property owned directly or indirectly by the acquired legal entity is deemed to have undergone a change in ownership."

Under the foregoing provisions, it has consistently been our position that to attribute indirect ownership of property which is directly owned by either a general or limited partnership to a person or entity requires ownership of more than 50 percent of the capital and profits of the partnership by the person or entity. Thus, before a change in ownership of the property of Partnership One can occur here under section 64(c), "A" must obtain direct or indirect ownership of more than 50 percent of the partnership interest in Partnership One. Since "A" directly owns 50 percent of Partnership One and Partnership Two owns the other 50 percent, "A" would either have to obtain an interest in Partnership One directly from Partnership Two or obtain an interest in Partnership One indirectly by acquiring more than a 50 percent interest in the capital and profits of Partnership Two in order to trigger section 64(c). Since the only acquisition intended by "A" is an 8.5 percent limited partnership interest in Partnership Two, no change in ownership would occur under section 64(c) and the acquisition would be excluded under section 64(a).

CHANGE IN OWNERSHIP (Contd.)

220.0504 **Partnership.** The execution and recording of a Statement of Partnership constitute acts sufficient to create a partnership. A subsequent transfer of property owned by some of the partners to the partnership creates ownership interests in all the partners and is, therefore, a change in ownership.

If the partners agree to amend the partnership agreement so that only the contributors of property to the partnership remain partners and the others drop out, then the old factored base year value could be reinstated. This would not result in a refund of taxes, however since tax liability is determined by the facts as they exist on the March 1 lien date for the regular roll, or on the date of the change in ownership for the supplemental roll. C 4/29/86.